

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.3777 of 2016

Date of Decision.28.05.2016

Balbir Singh

.....Petitioner

Vs.

Rakesh Kumar

.....Respondent

Present: Mr. Deepanjay Sharma, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The revision petitioner is the judgment debtor who had been served with notice of arrest in an application under Order 21 Rule 37 CPC. The Executing Court has recorded the fact that he refused to receive the summons which were served on him and there was an endorsement to that effect. It, therefore, found that he had no tenable objection to state against being arrested and set the further process of arrest to be made and brought before Court.

2. The counsel appearing on behalf of the judgment debtor objects to the order by saying that Section 51 CPC contemplates the satisfaction of the Court that the judgment debtor has the means to pay and still he is refusing to pay. The judgment debtor must be given an opportunity to explain his own conduct and the Court had not granted any such opportunity to the judgment debtor. It is the contention that the defendant has not been set as party and that, therefore, the court ought to have given an opportunity to the judgment debtor to show that he was not liable for

arrest.

3. Apart from reading the provisions of Order 21 Rule 37 and Section 51 of CPC, nothing substantial has been brought before me that there is any violation of the mandate required in law. If the judgment debtor believes that by refusing to get served that he has manifested his inability to pay, he is completely mistaken. A refusal is an act of defiance and if he does not avail to himself an opportunity in coming to court and explaining his liability, I cannot find that there is anything amiss which the trial Court has omitted to see before ordering arrest. There was no application filed before the Court below that he was not served and that the endorsement of refusal was falsely done by the decree holder to secure the order of arrest. Without even moving Court which has ordered the arrest for recall of the order originally passed that the so-called endorsement of refusal was erroneous, there can be no case made before this Court for the first time to say that there was no valid service of notice and that the arrest ordered had been contrary to law.

4. The counsel also argued that he has properties and the decree holder has only a right to proceed against the property. His very assertion of ownership of property proves his means. He also agreed that the decree has not become final and he has preferred an appeal. If the Appellate Court has not even granted stay in appeal, there is no fetter for the Executing Court's power to order arrest.

5. There is no reason for making an interference with the order passed. The revision petition is dismissed.

(K. KANNAN)
JUDGE

May 28, 2016

Pankaj*